



Order under Section 69 Residential Tenancies Act, 2006

Citation: Starlight Canadian Residential Growth Fund v Sharpe-Simons, 2022 ONLTB 14134

Date: 2022-12-08

File Number: LTB-L-019588-22

In the matter of: 0607, 580 The East Mall
Etobicoke ON M9B4A7

Between: Starlight Canadian Residential Growth Fund Landlord

And

Donna Sharpe-Simons, Malcolm St Clare Tenant
Simons

Starlight Canadian Residential Growth Fund (the 'Landlord') applied for an order to terminate the tenancy and evict Donna Sharpe-Simons, Malcolm St Clare Simons (the 'Tenant') because the Tenants did not pay the rent that the Tenants owes.

This application was heard by videoconference on October 24, 2022. The Landlord's legal representative S. Harris and the Tenants attended the hearing.

Determinations:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants was still in possession of the rental unit.
3. The lawful rent is \$2,379.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$78.21. This amount is calculated as follows: \$2,379.00 x 12, divided by 365 days.
5. The Tenants has paid \$8,150.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$10,548.90.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,379.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$23.23 is owing to the Tenants for the period from September 18, 2021 to October 24, 2022.

Relief from eviction

10. The Tenants seek relief from eviction by way of a payment plan. They both testified that there was some confusion with parking charges which led to the arrears. Ms. Simons testified that she is currently unemployed and receiving employment insurance (EI). Mr. Simons is employed, but testified that his work was on strike in the month of May 2022. The Tenants testified that they have a total household income of \$5,000.00 per month and they also have access to an educational loan in the amount of \$2,000.00 which they intend to put toward the arrears. The Tenants testified to receiving information about the rent bank, however they have not applied for this resource as of the hearing date.
11. The Landlord seeks a standard order because the tenancy is new, the arrears are substantial and the Tenants do not appear to have the income to sustain the Tenancy as they fell into arrears with no explanation, while having a steady source of income. The Landlord credited the Tenants with free rent for October and November 2021 but notwithstanding this relief, they fell into arrears very soon after the commencement of the tenancy. The Landlord argues that there has been no good faith on the part of the Tenants and with the substantial arrears accruing, the Landlord is highly prejudiced.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenants have had sufficient income throughout the tenancy to avoid the arrears situation that is before the Board. While there was a brief interruption in the household income in May 2022 due to a strike, there was no reasonable explanation for the quantum of arrears that have accrued. Based on the evidence before me, I am not satisfied that the Tenants experienced hardships which led to the quantum of arrears. Further, I do not find that the availability of an education loan is appropriate to apply to the arrears of rent as it is presumably intended to be utilized for educational resources. Therefore, I find that a standard order as requested by the Landlord is appropriate in the circumstance. By way of the delay in issuing this order, the Tenants will have had the benefit of additional time to seek community services and resources which may assist them with rent relief or to provide services for alternate housing options.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$15,492.90 if the payment is made on or before December 19, 2022. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after December 19, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before December 19, 2022**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$7,830.71. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$78.21 per day for the use of the unit starting October 25, 2022 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before December 19, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 20, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before December 19, 2022, then starting December 20, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after December 20, 2022.

December 8, 2022
Date Issued

Donna Adams
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on June 20, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before December 19, 2022

Rent Owing To December 31, 2022	\$23,456.90
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$8,150.00
Total the Tenants must pay to continue the tenancy	\$15,492.90

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$18,196.94
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$8,150.00
Less the amount of the last month's rent deposit	- \$2,379.00
Less the amount of the interest on the last month's rent deposit	- \$23.23
Total amount owing to the Landlord	\$7,830.71
Plus daily compensation owing for each day of occupation starting October 25, 2022	\$78.21 (per day)